Concerning Essay Contest on Medical Subject.

(COPY)

MISSISSIPPI VALLEY MEDICAL SOCIETY

November 27, 1940.

To the Editor:—We will be grateful for any publicity you may give in your publication to the Mississippi Valley Medical Society's Annual Essay Contest, notice of which is enclosed.

Sincerely,

MISSISSIPPI VALLEY MEDICAL SOCIETY.

Harold Swanberg, M. D., *Secretary.*

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Mississippi Valley Medical Society 1941 Essay Contest

The Mississippi Valley Medical Society offers annually a cash prize of $100, a gold medal, and a certificate of award for the best unpublished essay on any subject of general medical interest (including medical economics) and of practical value to the general practitioner of medicine. Certificates of merit may also be granted to the physicians whose essays are rated second and third best. Contestants must be members of the American Medical Association who are residents of the United States. The winner will be invited to present his contribution before the next annual meeting of the Mississippi Valley Medical Society at Cedar Rapids, Iowa, October 1, 2, 3, 1941, the Society reserving the exclusive right to first publish the essay in its official publication. All contributions shall not exceed five thousand words, be typewritten in English in manuscript form, submitted in five copies, and must be received not later than May 1, 1941. Further details may be secured from Harold Swanberg, M. D., Secretary, Mississippi Valley Medical Society, 209-224 W. C. U. Building, Quincy, Illinois.

Concerning "Political Medicine" in Lieu of "Socialized Medicine."

Milwaukee, December 12, 1940.

To the Editor:—I suggest substituting the term "Political Medicine" for the terms "Federal," "State," or "Socialized Medicine," henceforth in all medical papers, speeches, and all publicity pertaining in any way to this subject. It will throw the issue squarely into the laps of the politicians, where it belongs and where it originated. It may not prove so easy for the politicians to explain to the public just why it should be necessary to force politics between the "patient and his physician."

Also, the use of the term "political medicine" is a clear and simple explanation to those persons who are "in the dark" as to the true meaning of "socialized medicine."

Very truly,

JOHN W. HANSEN, M. D.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

A California Court Again Holds That Mere Occurrence of Injury Does Not Establish Malpractice

For many years the decisions of the California courts had a tendency to apply to malpractice actions the rule of evidence, often referred to as "res ipsa loquitur" (the thing speaks for itself). This rule is to the effect that the mere occurrence of an injury when the thing which causes the injury is shown to be under the management of the defendant and the injury is such as in the ordinary course of things does not happen so long as those having the management use proper care, affords reasonable evidence, in the absence of proper explanation by the defendant, that the injury arose from a want of care. Thus it had been held that the mere occurrence of an x-ray burn or an injury due to the failure to remove a sponge was of itself sufficient to raise a presumption of negligence. However, in *Engelking* vs. *Carlson,* decided in March, 1939 (commented upon in the medical jurisprudence article in the July, 1939, issue of CALIFORNIA AND WESTERN MEDICINE at page 66), the court abandoned its prior position and held that the mere discovery after an operation upon a plaintiff's knee that the external peroneal nerve had been severed, was not sufficient to establish negligence on the part of the physician without some actual evidence of carelessness during the operation.

In a very recent decision, *Guilliams* vs. *Hollywood Hospital, etc.,* 102 Cal. App. Dec. 565, the rule expressed in the Engelking decision was reiterated and extended to instances in which a hospital, as well as a physician, was defendant. In that case plaintiff's complaint alleged that he entered the defendant hospital as a patient for an operation on the right kidney; that some time after his admission, his second floater rib on the left side was broken as a result of defendant's negligence; that plaintiff did not know how such break actually occurred, whether it was before, during or after the operation. Some six weeks after the operation the break was discovered and plaintiff alleged that the hospital was guilty of negligence in not discovering the break at an earlier date. Plaintiff thus attempted to plead a case against the hospital by alleging negligence in very general terms.

The court, in sustaining a demurrer to the complaint, held that plaintiff had not alleged sufficient facts to place liability upon the defendant even if the facts alleged were found to be true. The court, in addition to stating that plaintiff's complaint showed that he had no knowledge as to how, when or where the rib was broken and thus had merely concluded negligence upon the part of the defendant by pure speculation, also held that while negligence may, as a rule, be charged in general terms under California rules of pleading, a plaintiff must, however, point out some act which was done and allege that it was done negligently. In Guilliams' complaint there were no facts set forth as to what the defendant did or omitted to do.

The plaintiff attempted to take advantage of the doctrine of "res ipsa loquitur," arguing that by merely placing himself in the hospital's hands, an inference should be raised that any injury occurring while such condition continued would be the result of negligence on the part of the hospital. The court held that the rule of res ipsa loquitur, even conceding it to be applicable, merely relieves a party from the duty of proving some act set out in the complaint. It does not relieve a party from pointing out in the complaint a certain act or omission and labeling it as having been negligently done. The court continued its opinion with the following statement, which infers that the doctrine of "res ipsa loquitur" would not apply to the case even though negligence had been sufficiently designated:

"Defendant hospital is in no sense an insurer, nor can it be successfully contended that there is anything about a hospital, as such, that is inherently dangerous. The attempt, therefore, of plaintiff, in the circumstances, to base a cause of action upon a lack of knowledge, as the complaint in substance affirmatively shows, finds no support in the law."

As to plaintiff's contention that his damage was increased by the delay in discovery of the break by the hospital, the court held that there could be no liability on the part of the hospital, since discovery of a broken rib and treatment of the same after discovery would constitute the practice of medicine, and that a hospital could not be charged with that duty since by Section 2008 of the Business and Professions Code the privilege of practicing medicine is denied to corporations.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.